

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 STEPHEN H. ARNOLD,

12 vs. Plaintiff,

13 ROYAL BANK OF CANADA
14 TRUST COMPANY (CAYMAN)
15 LIMITED; and DOES ONE through
FORTY, inclusive,

CASE NO. 13-cv-3171-H (RBB)

**ORDER VACATING
CLERK'S ENTRY OF
DEFAULT**

16 Defendant.

17 On December 27, 2013, Plaintiff Stephen Arnold ("Plaintiff") filed a complaint
18 against Defendant Royal Bank of Canada Trust Company (Cayman) Limited
19 ("Defendant" or "RBC Cayman"). (Doc. No. 1.) On February 25, 2014, Plaintiff filed
20 a request for entry of Clerk's default against Defendant. (Doc. No. 5.) On March 4,
21 2014, the Clerk entered default against Defendant. (Doc. No. 6.) On March 14, 2014,
22 the Court issued an order to show cause why the Clerk's entry of default should not be
23 vacated due to inadequate proof of proper service of process. (Doc. No. 7.)

24 On March 27, 2014, Plaintiff filed a first amended complaint. (Doc. No. 11.) On
25 April 10, 2014, Plaintiff filed a response to the Court's order to show cause, stating that
26 Plaintiff intended to re-serve Defendant RBC Cayman, but also contending that service
27 on RBC Cayman in Ontario, Canada was proper. (Doc. No. 13.)

28 ///

Discussion

I. Federal Rules of Civil Procedure for Serving a Corporation Outside Any Judicial District of the United States

4 Federal Rules of Civil Procedure 4(h)(2) and 4(f) set forth the process for serving
5 a foreign corporation outside the judicial districts of the United States. A plaintiff may
6 serve a litigant who is not present within any judicial district of the United States “by
7 any internationally agreed means of service that is reasonably calculated to give notice,
8 such as those authorized by the Hague Convention on the Service Abroad of Judicial
9 and Extrajudicial Documents.” Fed. R. Civ. P. 4(f)(1); see generally Convention on
10 Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial
11 Matters, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638 (“Hague Convention”).

12 Plaintiff asserts that service “is being made on [RBC Cayman] according to the
13 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents
14 pursuant to FRCP Rule 4(h)(2).” (Doc. No. 13 at 1-2.) Plaintiff asserts that he initiated
15 the process of serving RBC Cayman according to the Hague Convention on March 25,
16 2014. (See Doc. No. 13 at 4.)

II. The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents

19 “[C]ompliance with the [Hague] Convention is mandatory in all cases to which
20 it applies.” Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 705 (1988).
21 “[T]he Cayman Islands is a territory of the United Kingdom, and as such, it is
22 considered to be a signatory to the Hague Convention.” Mapping Your Future, Inc. v.
23 Mapping Your Future Servs., Ltd., 266 F.R.D. 305, 307 (D.S.D. 2009) (citing
24 Universal Trading & Inv. Co. v. Kiritchenko, No. C-99-3073 MMC, 2007 WL 295548,
25 at *2 (N.D. Cal. Jan. 30, 2007)).

26 As the district court in *Universal Trading* summarized:

27 Service pursuant to the Hague Convention may be effected by
28 forwarding the summons and complaint to the 'Central Authority' for
the country in which service is to be made, along with a form Request

1 For Service containing, *inter alia*, a form Summary of the Documents to
 2 be Served. See Hague Convention arts. 2-5. Once the Central Authority
 3 has served a document, it is required to ‘complete a certificate’ stating
 4 that ‘the document has been served and . . . the method, the place and
 5 the date of service and the person to whom the document was delivered.’
See id art. 6. The Hague Convention expressly provides that ‘[w]here a
 6 . . . summons . . . had to be transmitted abroad for the purpose of service,
 under the provisions of the [Hague] Convention, and the defendant has
 not appeared, judgment shall not be given unless it is established that . . .
 the service or delivery was effected in sufficient time to enable the
 defendant to defend.’ See Hague Convention art. 15.

7 Universal Trading, 2007 WL 295548, at *2 (N.D. Cal. Jan. 30, 2007) (refusing to enter
 8 default judgment because the plaintiff had not provided adequate certification from the
 9 Central Authority of the Cayman Islands that service of process was accomplished).
 10 The Central Authority for the Cayman Islands is the “Clerk of the Courts, Grand
 11 Cayman, Cayman Islands.” United Kingdom - Other Authorities (Art. 18), Hague
 12 Conference on Private International Law (HCCH) (Jan. 12, 2012),
 13 http://www.hcch.net/index_en.php?act=authorities.details&aid=681; see also Universal
 14 Universal Trading, 2007 WL 299548, at *2 n.2 (discussing a certificate issued by “the Bailiff of
 15 the Grand Court of the Cayman Islands on behalf of the Clerk of the Courts of the
 16 Cayman Islands . . .”)

17 Plaintiff has not submitted any documentation to show that he has received a
 18 certificate of service from the Clerk of the Courts in the Cayman Islands. Because
 19 Plaintiff cannot demonstrate adequate proof that service has been accomplished on
 20 RBC Cayman, the Court must vacate without prejudice the Clerk’s entry of default.
 21 Volkswagenwerk, 486 U.S. at 705; Universal Trading, 2007 WL 299548, at *4.

22 In the alternative, Plaintiff asserts that RBC Cayman is “a wholly owned
 23 subsidiary of ROYAL BANK OF CANADA,” (FAC at 1), and therefore that service
 24 on RBC Cayman at “200 Bay Street, South Tower, Toronto, Ontario, Candada M5J2J5
 25 can be shown to be proper.” (Doc. No. 13 at 3.) Plaintiff provides no documentation
 26 to support the assertion that RBC Cayman is in fact a wholly owned subsidiary of the
 27 Royal Bank of Canada, nor cites any law for the proposition that service upon a parent
 28 corporation excuses the requirement to effect service upon a subsidiary under the

1 Hague Convention. Cf. Fleming v. Yamaha Corp., USA, 774 F. Supp. 992, 994 (W.D.
2 Va. 1991) ([I]f a corporation and its wholly-owned subsidiary maintain separate
3 corporate identities, ‘though perhaps merely formal,’ service on the subsidiary is not
4 valid service on its parent, despite the identity of interests between the parent and its
5 subsidiary and despite control by the parent over the subsidiary’s operations.”) (citing
6 Cannon Manufacturing Co. v. Cudahy Packing Co., 267 U.S. 333, 336-37 (1925)).

7 **Conclusion**

8 For the foregoing reasons, the Court vacates without prejudice the Clerk’s entry
9 of default as to Defendant Royal Bank of Canada Trust Company (Cayman) Limited.
10 (Doc. No. 6.)

11 **IT IS SO ORDERED**

12 Dated: May 8, 2014



13 Marilyn L. Huff, District Judge

14 UNITED STATES DISTRICT COURT

15 COPIES TO:

16 All parties of record

17

18

19

20

21

22

23

24

25

26

27

28